IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 1703 of 2007(C)

AS.72/2006 of DISTRICT COURT, MANJERI
OS.100/2002 of SUB COURT, TIRUR
(EP 93/2005)
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PETITIONER:
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1. KOOLATH MUHAMMED, AGED 60 YEARS,
S/O. KAMMATH KUTTY, HOUSE OF ZAINA,
NEAR R.K.MISSION SCHOOL, KALLAI P.O.,
KOZHIKODE TALUK.

2. SALEEMA, AGED YEARS,
W/O. KOOLATH MUHAMMED, HOUSE OF ZAINA,
NEAR R.K.MISSION SCHOOL, KALLAI P.O.,
KOZHIKODE TALUK.

3. M/S. KOOLATH MUHAMMED & SONS,
REP. BY MANAGING PARTNER, KOOLATH MUHAMMED,
AGED 60 YEARS, S/O. KAMMATH KUTTY,
HOUSE OF ZAINA, NEAR R.K.MISSION SCHOOL,
KALLAI P.O., KOZHIKODE TALUK.

BY ADV. SRI.MANJERI SUNDERRAJ
SRI.B.PREMNATH (E)

RESPONDENTS:

K.SURESH, AGED 40 YEARS,
S/O. KRISHNAN NAIR, KOLORATH HOUSE,
THALAKULATHUR AMSOM & DESOM,
KOZHIKODE TALUK.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 1703 OF 2007

Dated 15th January 2007

J U D G M E N T

Petitioners are defendants and respondent the decree holder in O.S.100/02 on the file of Sub court, Tirur. Challenging the decree and judgment petitioners filed A.S.72/06 before District court, Manjeri with an application to condone delay of seven days in filing the appeal. Case of petitioners is that appeal was originally filed before District court, Manjeri, but it was returned with a direction to file appeal before this court and this court under Ext.P1 judgment dated 14/7/2006 directed petitioners to re-present the appeal before District court and consequently A.S.72/06 was filed with a delay of seven days. As there is delay, petitioners cannot get an order of stay of execution of the decree before condoning the delay. Meanwhile respondent filed E.P.93/05 before Sub court, Tirur for execution of the decree. This petition is filed under Article 227 of Constitution of India for a direction to District court, Manjeri to dispose of the application filed under Section

5 of Limitation Act to condone delay in filing the appeal and to grant an order of stay of execution of decree. A direction is also sought not to execute the decree till District court decides the application filed under Section 5 of Limitation Act.

2. Learned counsel appearing for petitioners was heard.

3. Delay of seven days is to be condoned by District court, Manjeri. It is represented by learned counsel appearing for petitioners that respondent has already appeared in A.S.72/06. If so, District court, Manjeri is directed to dispose the application filed to condone the delay in filing appeal as expeditiously as possible and at any rate, within 30 days from the date of receipt of copy of this judgment.

4. Once the delay is condoned petitioner has to seek an order of execution of decree under Rule 5(2) of Order XLI of Code of Civil Procedure, from District court. If petitioner furnish security equal to the money portion of the decree to the satisfaction of executing court, executing court shall stay the execution till the disposal of A.S.72/06.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.